UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DIEGO ENRICO MALTA,

Plaintiff,

-against-

FOX HORAN & CAMERINI, LLP, KATHLEEN M. KUNDAR, ESQ., WILLIAM IRA KAPLAN, ESQ., and ROMAN ANDREW SHORE, ESQ.,

Defendants.
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COMPLAINT

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Plaintiff Diego Enrico Malta, as and for his Complaint for legal malpractice against Defendants Fox Horan & Camerini, LLP, Kathleen M. Kundar, Esq., William Ira Kaplan, Esq. and Roman Andrew Shore, Esq. alleges the following:

THE PARTIES

1. Plaintiff is an individual residing and domiciled in the County of Dade and the State of Florida.

2. Defendant Fox Horan Camerini, LLP ("Fox Horan") is a New York State limited liability partnership, which operates its law practice with an office in the State, City and County of New York.

3. Defendant Kathleen M. Kundar ("Kundar") is an individual licensed to practice law in the State of New York, currently of counsel to, and during the events set forth herein a partner in Fox Horan with offices located in the State, County and City of New York.

4. Defendant William Ira Kaplan ("Kaplan") is an individual licensed to practice law in the State of New York, currently a partner of Fox Horan with offices located in the State, County and City of New York.

5. Defendant Roman Andrew Shore ("Shore") is an individual licensed to practice law in the State of New York, currently counsel in Defendant Fox Horan with offices located in the State, County and city of New York.

6. At all relevant times, Shore, Kundar and Kaplan were acting within the scope of their duties as attorneys in Fox Horan.

JURISDICTION AND VENUE

7. This Court has federal diversity jurisdiction over this action and over the Defendants pursuant to 28 U.S.C. § 1332 in that the matter in controversy exceeds $75,000 and the parties herein are citizens of different states.

8. Plaintiff resides and is domiciled in Florida.

9. Defendant Fox Horan has its principal place of business in New York.

10. Defendants Kundar, Shore and Kaplan conduct business and upon information and belief, reside in the State and County of New York.

11. Venue is proper in this District because Defendants conduct business in this District, and the acts and omissions giving rise to the claims alleged herein occurred in this District.

FACTS UNDERLYING DEFENDANTS' LEGAL MALPRACTICE

12. This action arises out of and concerns egregious acts of legal malpractice committed by Defendants against Plaintiff in connection with estate planning for Plaintiff, and for his brothers, nonparties Robert Malta and the recently deceased Joseph Malta.

13. Defendants were hired and retained by Plaintiff and his brothers under a joint representation retainer agreement on or about February 18, 2016.

13. The retainer agreement specifically listed Defendants Kundar, Shore and Kaplan

as the attorneys in Fox Horan who would be providing legal services to Plaintiff.

14. During Defendants' representation of Plaintiff, Defendants failed to deliver bills to Plaintiff.

15. The estate planning for which defendants were hired as plaintiff's attorneys concerned whether there would be the transfer of all of Plaintiff's shares in two limited liability companies, 106-108 West 73rd Street Associates, LLC (which owns the real property located at 106-108 West 73rd Street in Manhattan) and 110 West 73 Associates, LLC (which owns the real property located at 110-112 West 73rd Street in Manhattan) to his mother Dina Malta.

16. At the time that Defendants were retained, Plaintiff owned 100% of the shares in 106-108 West 73rd Street Associates, LLC and 49% of the shares in 110 West 73 Associates, LLC.

17. The appraised value of the real estate at 106-108 West 73rd Street is $9.7 million and the appraised value of the real estate at 110-112 West 73rd Street is $13.8 million.

18. Shortly after February 18, 2016, defendant Kaplan as counsel for all three Malta brothers prepared a Gift Agreement, whereby Plaintiff was to gift the assets in the two limited liabilities companies to his mother for no stated consideration. This agreement as drafted by defendant Kaplan was executed on or about May 16, 2016.

19. From their February 18, 2016 retention as plaintiff's attorneys until the execution of the Gift Agreement on or about May 16, 2016, Defendants failed to communicate with Plaintiff, *in any manner whatsoever*.

20. More specifically, at no time prior to the execution of the Gift Agreement was the Plaintiff advised by any of the Defendants that the Gift Agreement would cause him to suffer severe negative tax consequences. Specifically, federal tax law then was in effect mandated that

any gift exceeding $5,450,000 dollars would be taxed at a 40% rate.

21. Defendants failed to communicate this crucial risk with Plaintiff in any manner whatsoever, and instead had Plaintiff blindly gift away his assets worth $15,856,000 through the document that Defendants had prepared.

22. Furthermore, prior to the execution of the Gift Agreement, Defendants did not possess or even request any appraisals on the properties owned by two limited liability companies which would be needed to competently advise plaintiff, including to compute any tax consequence to plaintiff resulting from the gift.

23. In other words, Defendants negligently failed to advise plaintiff and negligently failed make any effort whatsoever to calculate whether the amount gifted would reach or exceed $5.4 million threshold, and thereby subject Plaintiff to a 40% tax.

24. Upon information and belief, Defendants prepared gift tax forms (IRS Form 709) in connection with the gift, but negligently, inexplicably and inexcusably did so only a month *after* the execution of the Gift Agreement, and negligently failed to provide these forms or any information regarding taxes to Plaintiff at that time, or ever.

25. Now, as a direct consequence of the Gift Agreement and Defendants' legal malpractice, Plaintiff has been informed by his accountant that his gift tax liability will be $4,162,400. But for defendants' legal malpractice and negligence, plaintiff would not incur such liability; had defendants properly represented plaintiff he would not have signed and delivered the Gift Agreement which they prepared for him, proximately causing him damages of $4,162,000.

FIRST CLAIM FOR RELIEF
(Legal Malpractice)

26. The above paragraphs are incorporated herein as if fully set forth herein.

27. Pursuant to the parties' retainer agreement, Defendants were afforded the exclusive right, and corresponding obligation, to represent and advise Plaintiff in estate planning in a reasonably competent fashion.

28. Although an attorney is obligated to know the law relating to the matter for which he or she is representing the client (or to inform one's self otherwise), Defendants upon information and belief, lacked such knowledge with regard to the matter they undertook for Plaintiff, and accordingly failed to perform the work in a skillful manner.

29. The foregoing legal representation of Plaintiff was a clear departure and deviation from the standards and actions of other attorneys similarly situated and thus constituted legal malpractice.

30. At all relevant times, Defendants' breach of the duties owed to Plaintiff as their client proximately caused him to sustain actual and ascertainable damage in an amount believed to exceed $4 million due to gift tax liability, which amount is far in excess of the jurisdictional minimum for this Court.

31. But for Defendants' negligent failures such damages would not have been sustained.

32. In several material respects as described herein, Defendants' legal representation of Plaintiff deviated from good and accepted standards in the industry and so proximately caused Plaintiff severe economic damage; these deviations caused the Plaintiff to suffer severe economic damages which would not have been sustained by them but for the Defendant's failures.

33. As set forth herein, Defendants failed to fulfill its obligations and failed to act in a reasonable way in accord with acceptable standards of care governing the conduct of attorneys in

such circumstances.

34. At all relevant times, as set forth below, in their legal representation of Plaintiff the Defendants herein failed to exercise the ordinary reasonable skills and knowledge commonly possessed by a member of the legal profession.

35. Defendants negligently failed to perform the work they were hired for in a skillful manner by amongst other things:

a) Failing to communicate with Plaintiff in any manner whatsoever about Estate Planning;

b) Failing to send Plaintiff bills for services rendered for Estate Planning;

c) Failing to counsel Plaintiff to have the value of the gifted assets appraised before signing the Gift Agreement;

d) Failing to advise Plaintiff of the tax consequences of the Gift Agreement;

e) Failing to advise Plaintiff to obtain independent tax counsel; and

f) Failing to advise Plaintiff of the unconditional nature of the Gift.

36. But for Defendants' legal malpractice, Plaintiff would have not signed the Gift Agreement. Defendants' legal malpractice resulted in the Plaintiff herein being damaged in an amount to be determined at trial but in no event less than $4 Million.

37. As a proximate result of the negligence and legal malpractice of Defendants, as set forth herein, Plaintiff proximately sustained damages in an amount to be determined at trial, but believed to be $4,162,000, together with additional interest accruing thereon until judgment is entered herein.

DEMAND FOR A JURY TRIAL

A trial by jury is demanded for all claims alleged herein.

WHEREFORE, Plaintiff respectfully request judgment against the Defendants as follows:

(a) judgment jointly and severally against the defendants for negligence and legal malpractice, in an amount to be determined at trial, but believed to be more than $4,162,000 with interest: and

(b) such other and further relief as this Court deems just and proper, including without limitation costs and disbursements incurred herein, plus reasonable attorneys' fees to be determined by the Court.

Dated: New York, New York
May 2, 2017

CATAFAGO FINI LLP

By: *s/Jacques Catafago*

Jacques Catafago
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